



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: APAC-Tennessee, Inc.--Request for
Reconsideration
File: B-231388.2
Date: August 2, 1988

DIGEST

Request for reconsideration is denied where protester fails to demonstrate factual or legal error or provide any new information warranting reconsideration of initial decision.

DECISION

APAC-Tennessee, Inc., a large business, requests reconsideration of our decision in APAC-Tennessee, Inc., B-231388, June 27, 1988, 88-1 CPD ¶ 611, in which we denied its protest of the issuance of invitation for bids (IFB) No. DACW66-88-B-0033 as a total small business set-aside. The IFB was issued by the Army Corps of Engineers for articulated concrete mattresses to be cast at the Helena, Arkansas, Casting Field and used for riverbank stabilization.

We deny the request for reconsideration.

APAC, whose predecessors had provided mattresses to the Corps, protested that in the time since the procurement of mattresses at various locations along the Mississippi River was set aside for small businesses in 1982, the same three companies had been the only small business bidders. APAC also stated that whichever of these firms was awarded the contract for a particular location almost always won the competition for the follow-on contract as well. As a consequence, APAC argued, there effectively could be no reasonable expectation of bids from at least two small businesses at a given location, and an expectation of contract award at a reasonable price, as required by Federal Acquisition Regulation (FAR) § 19.501(g) (FAC 84-31).

We denied APAC's protest because we found that the contracting officer properly determined that both necessary expectations existed. We also noted that it was apparent

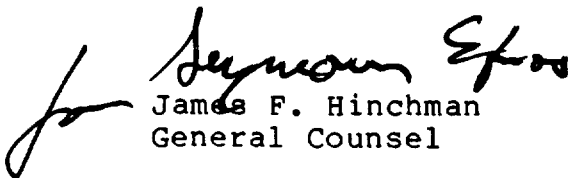
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from past APAC bid protest decisions on the same issue that a contracting officer properly may rely on prior set-aside results in meeting the FAR expectations regarding the number of bidders and price. We pointed out that the fact that those procurements might have included a particular group of competitors did not detract from the propriety of the contracting officer's reliance.

In its reconsideration request, APAC complains that in reaching our decision we failed to consider "the complex issues addressed by [its] supplemental response" to the Corps' request for dismissal of the protest. In the noted response, the firm argued that in making the required FAR determinations the contracting officer improperly limited his consideration to the results of past set-aside procurements, and failed to consider the significance of repeated contract awards to the same bidder at the same location. APAC also contended that in making his decisions the contracting officer did not judge whether the expected small business bidders in fact were capable of performing the contract.

As is evident from the above synopsis of our price decision, we fully considered APAC's position regarding the bases for the contracting officer's expectations of competition and prices. With regard to APAC's assertion that before setting a procurement aside a contracting officer must determine whether expected small business bidders are capable of performing the contract, the FAR does not require the agency to make a determination that is tantamount to an affirmative determination of responsibility. The FAR only obligates the agency to make an informed business judgment that there is a reasonable expectation of receiving bids from two small firms that are capable of performing the contract. McBer and Co., B-225453, Feb. 11, 1987, 87-1 CPD ¶ 151. We see no reason to question that judgment here.

APAC has failed to establish any legal or factual error in our decision or to provide information not previously considered. The request for reconsideration therefore is denied. 4 C.F.R. § 21.12(a) (1988).


James F. Hinchman
General Counsel